

A **ROBINDER SINGH JAJ BIJIR SINGH v. JASMINDER KAUR
 BHAJAN SINGH**

FEDERAL COURT, PUTRAJAYA
ZABARIAH MOHD YUSOF FCJ
MARY LIM FCJ

B HARMINDAR SINGH DHALIWAL FCJ
[CIVIL APPEAL NO: 02(i)-48-08-2023(N)]
9 FEBRUARY 2024

C **Abstract** – (i) Cause papers, from petition to interlocutory applications
and associated affidavits, filed under the Law Reform (Marriage and
Divorce) Act 1976 ('Act') read with the Divorce and Matrimonial
Proceedings Rules 1980 ('Rules'), may be filed in the English language
without an accompanying translation in the National Language.
D A litigant can expect their cause papers to be accepted not just by the
Registry but by the judge without any issue since there is a clear
permission for a filing of related documents in English; (ii) the Rules
contain comprehensive provisions on the commencement and conduct of
matrimonial proceedings, including applications for judicial separation
under the Act. Therefore, the Rules of Court 2012, in particular O. 92,
E does not apply to matrimonial proceedings.

FAMILY LAW: Matrimonial proceedings – Documents – Filing of application in
English language – Failure to file translation of application in National language
within time ordered – Whether translation of documents required – Whether cause
F papers, from petition to interlocutory applications and associated affidavits, filed
under Law Reform (Marriage and Divorce) Act 1976 read with Divorce and
Matrimonial Proceedings Rules 1980 may be filed in English language without
accompanying translation in National Language – Whether O. 92 r. 1 of Rules of
Court 2012 apply to matrimonial proceedings – Whether administrators of registries
G ought to comply with Registrar's Circular and accept cause papers filed in English
language only – Whether dismissal of application would deprive litigant access to
justice and equal protection under arts. 5 and 8 of Federal Constitution

The appellant and the respondent herein agreed that their marriage had
irretrievably broken down. The respondent thereafter filed an *ex parte*
H application at the High Court for, *inter alia*, interim sole custody, care and
control of a son from the marriage. The High Court granted certain orders
(*'ex parte order'*). The appellant filed an application (encl. 20) to set aside the
ex parte order (encl. 20). In this application, the appellant contended that
I there were no urgent circumstances warranting the respondent's application
to be filed on an *ex parte* basis, that the respondent had failed to disclose
material facts, and that there was a failure to comply with O. 29 r. 1 of the
Rules of Court 2012 ('ROC'), rr. 61(1) and 91 of the Divorce and

Matrimonial Proceedings Rules 1980 ('DMPR'), and an assertion that the appellant had suffered damage and costs by reason of the *ex parte* order. The appellant subsequently filed for, *inter alia*, interim guardianship, custody, care, control and access ('encl. 26'). The parties recorded a consent order to encl. 26. Thereafter, the appellant asked for encl. 20 to be heard. The High Court, in dismissing encl. 20, held that the appellant had failed to file the translation of this application within the time ordered. According to the High Court, O. 92 r. 1(4) required a translation of the documents to be filed within two weeks or within such extended time as allowed by the court. Insofar as the Registrar's Circular No. 5 of 1990 ('Registrar's Circular') was concerned, the High Court held that encl. 20 was dismissed not because it was filed in the English language but because no translation was filed within the time directed and under the mandatory requirements of O. 92 r. 1 of the ROC. The Court of Appeal found that there was no merit in the appeal premised on O. 92 r. 1(1) and (4) of the ROC coupled with the Registrar's Circular being administrative in nature and that the Registrar's Circular could not possibly prevail over the language requirement in O. 92 r. 1(1) of the ROC. Three questions of law for which leave to appeal was granted herein under s. 96 of the Courts of Judicature Act 1964 ('CJA') revolved around the issue of whether cause papers, from petition to interlocutory applications and associated affidavits, filed under the Law Reform (Marriage and Divorce) Act 1976 ('Act 164') read with DMPR may be filed in the English language without an accompanying translation in the National Language in view of the Registrar's Circular. The questions of law were: (i) whether petitions for judicial separation or divorce (matrimonial proceedings) filed pursuant to the provisions of Act 164 and DMPR may be filed in the English language only ('first question'); (ii) if so, whether all other cause papers filed in the matrimonial proceedings may be filed in the English language only ('second question'); and (iii) whether the filing of the documents in English language only was an irregularity that could be cured with the necessary directions by the court that the said cause papers be filed in the National Language ('third question').

Held (allowing appeal)

Per Mary Lim FCJ delivering the judgment of the court:

- (1) Order 92 r. 1 of the ROC is applicable where the document(s) filed in court are for use in pursuance to 'these Rules'; these Rules being the ROC. But ROC does not apply to matrimonial proceedings under Act 164 and DMPR. Order 1 r. 2(2) specifically recognises that the ROC will not have any effect in or to those proceedings where separate rules have already been made or may be made under written law specifically for the purpose of such proceedings. This is an express provision for the operation of the maxim *generalia specialibus non derogant*. There is also O. 94 r. 2(2) which provides that in the event there is any inconsistency between any of the Rules made under the specific written law and the ROC, the former shall prevail. (paras 35-37)

- A (2) If the ROC are ever to apply, it is only where it is expressly provided in the ROC. This reemphasised the significance and application of the specific rules enacted under the written law. In the present appeal, it would be the DMPR itself which contains comprehensive provisions on the commencement and conduct of matrimonial proceedings, including applications for judicial separation under Act 164. All this, therefore, meant that the ROC and, in particular, O. 92 do not apply to the matrimonial proceedings at hand. (para 39)
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- C (3) Rule 105 of the DMPR provides for the issuance of directions for the purpose of ensuring uniformity of practice and observance of the statutory requirements in matrimonial proceedings. There is a similar power in s. 17A of the CJA for the issuance of Practice Directions and in O. 92 r. 3B; the directions seen as 'necessary for the better carrying out or giving effect' to the provisions of the ROC. There was nothing in the Registrar's Circular to suggest that it was issued pursuant to r. 105.
- D However, it would be reasonable to say that the contents of this Circular accorded with the purpose why any directions would be issued under r. 105, that it was issued in order to ensure uniformity of practice and due observance of the statutory requirements in Act 164 and DMPR. (paras 40-42)
- E (4) Practice Direction No 2 of 1990 ('PD No 2/1990') was issued following the application of the National Language to proceedings in court. Even then, there was cognisance of the importance of interests of justice, that such interests must never be compromised in the course of implementing procedures for the better administration of justice. PD No 2/1990, as is with other Practice Directions, is directed at the judges who will hear the applications under the relevant laws and is copied extensively to everyone who mattered or was concerned with the administration of justice. The same may be said of the Registrar's Circular, which is directed at all the Senior Assistant Registrars and Registrars in West Malaysia. The direction is given to these recipients so that they know what to do when confronted with the particular circumstance. What the administrators who man the Registries have to do is to comply with the Registrar's Circular and accept any cause papers which are filed only in the English language. (paras 43-46)
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- H (5) In other words, any litigant taking proceedings under Act 164 including filing an application such as encl. 20, could expect that it will be 'business as usual' and may proceed to file the application only in the English language; particularly since the DMPR have yet to be translated and the translation, gazetted. A litigant such as the appellant here could expect their cause papers to be accepted not just by the Registry but by the judge without any issue since there was a clear permission for a filing of related documents in English. This expectation would be quite
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legitimate and fair since the litigant in this appeal could not use the ROC *simpliciter* as the Rules themselves have excluded its application to matrimonial proceedings under Act 164. (paras 47 & 48)

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- (6) While Practice Directions and circulars are issued for the proper and better administration of justice, and they are generally effective in that regard, the courts who are responsible for the issuance of these directions and circulars must guard against adherence that results in injustice. The circumstances and conditions that present in this appeal illustrated this unfortunate outcome, with the appellant complying with the Registrar's Circular but indirectly faulted by the High Court having done so. (para 51)

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- (7) The relevant direction or circular must be carefully examined and appreciated in context. Having held out to the public that their cause papers may be filed only in the English language, it did not hold any sense to then castigate a party for not having complied with the ROC and reasoning that the direction and circular here was in fact worth naught. The dismissal of encl. 20 had the effect of depriving the appellant of access to justice and equal protection of the law as embodied in arts. 5 and 8 of the Federal Constitution. Thus, this court answered the first two questions of law posed in the affirmative and declined to answer the third question of law. (paras 53 & 57)

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Bahasa Melayu Headnotes

Perayu dan responden bersetuju bahawa perkahwinan mereka telah berpecah-belah dan tidak dapat lagi dipulihkan. Responden kemudian memfailkan permohonan *ex parte* di Mahkamah Tinggi untuk, *inter alia*, hak penjagaan tunggal dan kawalan sementara seorang anak lelaki daripada perkahwinan itu. Mahkamah Tinggi memberikan perintah tertentu ('perintah *ex parte*'). Perayu memfailkan permohonan untuk mengetepikan perintah *ex parte* itu ('lampiran 20'). Dalam permohonan ini, perayu menghujahkan bahawa tiada keadaan mendesak yang mewajarkan permohonan responden difailkan secara *ex parte*, bahawa responden gagal mendedahkan fakta material, dan terdapat kegagalan mematuhi A. 29 k. 1 Kaedah-Kaedah Mahkamah 2012 ('KKM'), k. 61(1) dan k. 91 Kaedah-Kaedah Prosiding Perceraian dan Hal Ehwal Suami Isteri 1980 ('DMPR'), dan menegaskan perayu mengalami kerugian atas sebab perintah *ex parte*. Perayu kemudiannya memfailkan untuk, antara lain, penjagaan interim, kawalan dan akses ('lampiran 26'). Pihak-pihak merekodkan perintah persetujuan untuk lampiran 26. Seterusnya, perayu memohon lampiran 20 dibicarakan. Mahkamah Tinggi, apabila menolak lampiran 20, memutuskan bahawa perayu gagal memfailkan terjemahan permohonan ini dalam masa yang diperintahkan. Menurut Mahkamah Tinggi, A. 92 k. 1(4) menghendaki

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- A penterjemahan dokumen itu difailkan dalam tempoh dua minggu atau dalam tempoh lanjutan masa yang dibenarkan oleh mahkamah. Setakat yang berkenaan Surat Pekeliling Pendaftar No. 5 tahun 1990 ('Pekeliling Pendaftar'), Mahkamah Tinggi memutuskan bahawa lampiran 20 telah ditolak bukan kerana telah difailkan dalam Bahasa Inggeris tetapi kerana
- B tiada terjemahan difailkan dalam masa yang diarahkan dan bawah keperluan mandatori A. 92 k. 1 KKM. Mahkamah Rayuan mendapati bahawa tiada merit dalam rayuan yang dibuat bawah A. 92 k. 1(1) dan (4) KKM 2012 ditambah dengan Pekeliling Pendaftar yang bersifat pentadbiran dan Pekeliling Pendaftar tidak mungkin mengatasi keperluan bahasa bawah A. 92
- C k. 1(1) KKM. Tiga soalan undang-undang terhadap mana kebenaran merayu dibenarkan bawah s. 96 Akta Mahkamah Kehakiman 1964 ('AMK') berkisar tentang isu sama ada kertas-kertas kausa, dari petisyen ke permohonan interlokutori dan affidavit berkait, yang difailkan bawah Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976 ('Akta 164') dibaca dengan DMPR boleh difailkan dalam Bahasa Inggeris tanpa penterjemahan
- D ke Bahasa Kebangsaan mengambil kira Pekeliling Pendaftar. Soalan-soalan adalah: (i) sama ada petisyen untuk perpisahan kehakiman atau perceraian (prosiding hal ehwal perkahwinan) yang difailkan menurut peruntukan-peruntukan Akta 164 dan DMPR, boleh difailkan dalam Bahasa Inggeris sahaja ('soalan pertama'); (ii) jika ya, sama ada segala kertas-kertas kausa
- E yang difailkan dalam prosiding hal ehwal perkahwinan boleh difailkan dalam Bahasa Inggeris sahaja ('soalan kedua'); dan (iii) sama ada pemfailan dokumen-dokumen dalam Bahasa Inggeris adalah satu ketidakaturan yang boleh dipulihkan dengan arahan-arahan perlu oleh mahkamah untuk kertas-kertas kausa tersebut difailkan dalam Bahasa Kebangsaan ('soalan ketiga').
- F **Diputuskan (membenarkan rayuan)**
Oleh Mary Lim HMP menyampaikan penghakiman mahkamah:
- (1) Aturan 92 k. 1 KKM terpakai apabila dokumen yang difailkan di mahkamah digunakan menurut 'Kaedah-Kaedah ini'; Kaedah-Kaedah ini ialah KKM. Tetapi, KKM tidak terpakai kepada prosiding hal ehwal perkahwinan bawah Akta 164 dan DMPR. Aturan 1 k. 2(2) secara khusus mengiktiraf bahawa KKM tidak akan mempunyai apa-apa kesan pada atau kepada prosiding yang mana kaedah-kaedah berasingan telah dibuat atau boleh dibuat bawah undang-undang bertulis khusus bagi tujuan prosiding itu. Ini adalah peruntukan nyata untuk pelaksanaan
- G *maxim generalia specialibus non derogant*. Terdapat juga A. 94 k. 2(2) yang memperuntukkan bahawa sekiranya terdapat sebarang ketidakkonsistenan antara mana-mana Kaedah yang dibuat bawah undang-undang bertulis khusus dan KKM, yang pertama hendaklah mengatasi.

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- (2) Jika KKM terpakai, itu hanya terpakai apabila diperuntukkan dengan jelas dalam KKM. Ini menekankan semula kepentingan dan penggunaan kaedah-kaedah khusus yang digubal bawah undang-undang bertulis. Dalam rayuan sekarang, DMPR sendiri yang mengandungi peruntukan-peruntukan komprehensif mengenai permulaan dan pelaksanaan prosiding hal ehwal perkahwinan, termasuk permohonan untuk pemisahan kehakiman bawah Akta 164. Oleh itu, ini bermaksud KKM, khususnya A. 92, tidak terpakai pada prosiding hal ehwal perkahwinan yang sedang dijalankan. A B
- (3) Kaedah 105 DMPR memperuntukkan pengeluaran arahan untuk memastikan keseragaman amalan dan pematuhan keperluan statutori dalam prosiding hal ehwal perkahwinan. Terdapat kuasa yang sama dalam s. 17A AMK untuk pengeluaran Arahan Amalan dan bawah A. 92 k. 3B; arahan-arahan dilihat sebagai 'perlu untuk melaksanakan atau memberi kesan yang lebih baik' pada peruntukan-peruntukan KKM. Tiada apa-apa dalam Pekeliling Pendaftar untuk mencadangkan bahawa itu telah dikeluarkan menurut k. 105. Walau bagaimanapun, adalah munasabah untuk menyatakan bahawa kandungan Pekeliling ini sesuai dengan tujuan mengapa sebarang arahan akan dikeluarkan bawah k. 105, bahawa itu dikeluarkan untuk memastikan keseragaman amalan dan pematuhan yang sewajarnya keperluan-keperluan statutori bawah Akta 164 dan DMPR. C D E
- (4) Arahan Amalan No 2/1990 ('PD No 2/1990') dikeluarkan berikutan penggunaan Bahasa Kebangsaan untuk prosiding di mahkamah. Walaupun begitu, terdapat kesedaran tentang kepentingan keadilan, bahawa kepentingan tersebut tidak boleh dikompromi dalam melaksanakan prosedur untuk pentadbiran keadilan yang lebih baik. PD No 2/1990, seperti Arahan Amalan lain, ditujukan pada hakim yang akan mendengar permohonan bawah undang-undang yang berkaitan dan disalin secara meluas kepada semua orang yang penting atau prihatin dengan pentadbiran keadilan. Perkara yang sama boleh dikatakan mengenai Pekeliling Pendaftar yang diarahkan kepada semua Penolong Pendaftar Kanan dan Pendaftar di Semenanjung Malaysia. Arahan diberikan kepada penerima-penerima ini supaya mereka tahu apa yang perlu dilakukan apabila berhadapan dengan keadaan tertentu. Apa yang perlu dilakukan oleh pentadbir yang mengendalikan pendaftaran adalah mematuhi Pekeliling Pendaftar dan menerima kertas kausa yang difailkan dalam Bahasa Inggeris sahaja. F G H
- (5) Dalam erti kata lain, mana-mana pihak yang memulakan prosiding bawah Akta 164 termasuk memfailkan permohonan seperti lampiran 20, boleh menjangkakan bahawa itu akan menjadi 'business as usual' dan boleh meneruskan untuk memfailkan permohonan dalam Bahasa I

- A Inggeris sahaja; terutamanya memandangkan DMPR masih belum diterjemahkan dan terjemahan itu diwartakan. Seorang pihak seperti perayu di sini boleh mengharapkan kertas kausa mereka diterima bukan sahaja oleh Pendaftar tetapi oleh hakim tanpa apa-apa masalah kerana terdapat kebenaran jelas untuk memfailkan dokumen berkaitan dalam Bahasa Inggeris. Jangkaan ini adalah agak sah dan adil kerana pihak dalam rayuan ini tidak boleh menggunakan KKM sewenang-wenangnya kerana Kaedah-Kaedah itu sendiri telah dikecualikan penggunaannya dalam prosiding hal ehwal perkahwinan bawah Akta 164.
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- C (6) Walaupun arahan amalan dan pekeliling dikeluarkan untuk pentadbiran keadilan yang sewajarnya dan lebih baik, dan secara amnya berkesan dalam hal itu, mahkamah yang bertanggungjawab mengeluarkan arahan dan Pekeliling ini mesti berwaspada terhadap ketidakpatuhan yang mengakibatkan ketidakadilan. Keadaan dan syarat yang terdapat dalam rayuan ini menggambarkan keputusan malang ini, dengan perayu mematuhi Pekeliling Pendaftar tetapi secara tidak langsung disalahkan oleh Mahkamah Tinggi kerana berbuat demikian.
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- E (7) Arahan atau pekeliling yang berkaitan mesti diperiksa dengan teliti dan konteksnya perlu difahami. Setelah menyatakan pada pihak awam bahawa kertas kausa mereka boleh difailkan dalam Bahasa Inggeris sahaja, tidak masuk akal untuk kemudiannya menghukum pihak itu kerana tidak mematuhi KKM dan beralasan bahawa arahan dan pekeliling itu sebenarnya patut diabaikan. Penolakan lampiran 20 mempunyai kesan melucutkan akses perayu pada keadilan dan perlindungan undang-undang seperti yang terkandung dalam per. 5 dan per. 8 Perlembagaan Persekutuan. Oleh itu, mahkamah ini menjawab soalan undang-undang pertama dan soalan undang-undang kedua yang dikemukakan secara afirmatif dan menolak untuk menjawab soalan undang-undang ketiga.
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Case(s) referred to:

- G *Ainsbury v. Millington* [1987] 1 All ER 929 (*refd*)
Bar Council Malaysia v. Tun Dato' Seri Arifin Zakaria & Ors And Another Reference; Persatuan Peguam-peguam Muslim Malaysia (Intervener) [2018] 10 CLJ 129 FC (*refd*)
Citibank Bhd v. Malwira Manufacturing Sdn Bhd [2012] 3 CLJ 81 HC (*refd*)
Costellow v. Somerset County Council [1993] 1 WLR 256 (*refd*)
Dato' Seri Anwar Ibrahim v. Tun Dr Mahathir Mohamad [2010] 1 CLJ 444 CA (*refd*)
- H *Emrail Sdn Bhd & Ors v. Kuwait Finance House (Malaysia) Bhd* [2020] CLJU 382; [2020] 1 LNS 382 HC (*refd*)
Export-Import Bank Of Malaysia Bhd v. TFT Display (M) Sdn Bhd [2021] CLJU 1185; [2021] 1 LNS 1185 HC (*refd*)
Kerajaan Malaysia v. Mudek Sdn Bhd [2017] 10 CLJ 158 FC (*refd*)
Lau Keen Fai v. Lim Ban Kay & Anor [2012] 1 CLJ 569 FC (*refd*)
- I *Megat Najmuddin Dato' Seri (Dr) Megat Khas v. Bank Bumiputra Malaysia Bhd* [2002] 1 CLJ 645 FC (*refd*)

- Ooi Bee Tat v. Tan Ah Chim & Sons Sdn Bhd & Anor And Another Appeal* [1995] 4 CLJ 484 CA (*refd*) A
- Protasco Bhd v. Tey Por Yee & Anor And Other Appeals* [2021] 9 CLJ 349 FC (*refd*)
- R v. Secretary Of State For The Home Department Ex Parte Salem* [1999] AC 450 (*refd*)
- Scientequip (M) Sdn Bhd v. Properties Review Sdn Bhd* [2006] 3 CLJ 592 HC (*refd*)
- Spind Malaysia Sdn Bhd v. Justrade Marketing Sdn Bhd & Anor* [2018] 4 CLJ 705 FC (*refd*) B
- Sun Life Assurance Co Of Canada v. Jervis* [1944] AC 111 (*refd*)
- Syarikat Telekom Malaysia Bhd v. Business Chinese Directory Sdn Bhd* [1994] 2 CLJ 729 SC (*refd*)
- Walley Metal Works Sdn Bhd v. Safety Development Corporation Sdn Bhd; Pegawai Penerima (Applicant) & Ler Cheng Chye (Liquidator)* [2015] 1 CLJ 1019 HC (*refd*)
- Witech Sdn Bhd & Ors v. BHR Group Ltd* [2010] 9 CLJ 288 CA (*refd*) C
- Zainun Dahan lwn. Rakyat Merchant Bankers Bhd & Satu Lagi* [1997] 4 CLJ Supp 279; [1997] 4 BLJ 279 HC (*refd*)
- Legislation referred to:**
- Courts of Judicature Act 1964, ss. 17, 17A, 96
- Divorce and Matrimonial Proceedings Rules 1980, rr. 3, 61(1), 91, 105
- Federal Constitution, arts. 5, 8, 152(1) D
- Law Reform (Marriage and Divorce) Act 1976, s. 108(1)
- National Language Acts 1963/67, ss. 2, 4, 8
- Rules of Court 2012, O. 1 r. 2(2), O. 5 r. 1, O. 29 r. 1, O. 92 rr. 1(1), (4), 3B, O. 94 r. 2(1), (2), Appendix C item 5
- Subordinate Courts Rules Act 1955, s. 4 E
- For the appellant - Honey Tan Lay Ean & Tay Kit Hoo; M/s Seira & Shahrizad*
- For the respondent - Harpal Singh Grewal, Dhanesh Subramaniam Nair & Sharanpreet Kaur Parmjit Singh; M/s AJ Ariffin, Yeo & Harpal*
- For the amicus curiae - Malik Imtiaz Sarwar & Wong Ming Yen; M/s Malik Imtiaz Sarwar*
- [*Editor's note: For the Court of Appeal judgment, please see Robinder Singh Jaj Bijir Singh v. Jasminder Kaur Bhajan Singh* [2023] CLJU 1844; [2023] 1 LNS 1844 (overruled).] F
- Reported by Suhainah Wahiduddin*

JUDGMENT

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Mary Lim FCJ:

[1] The three questions of law for which leave to appeal was granted under s. 96 of the Courts of Judicature Act 1964 (Act 91) revolve around the issue of whether cause papers, from petition to interlocutory applications and associated affidavits, filed under the Law Reform (Marriage and Divorce) Act 1976 (Act 164) read with the Divorce and Matrimonial Proceedings Rules 1980 (DMPR) may be filed in the English language without an accompanying translation in the National Language in view of Registrar's Circular No. 5 of 1990 (Registrar's Circular). The three questions of law are:

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- A (i) whether petitions for judicial separation or divorce (matrimonial proceedings) filed pursuant to the provisions of the Law Reform (Marriage and Divorce) Act 1976 (Act 164) and the Divorce and Matrimonial Proceedings Rules 1980 (DMPR) may be filed in the English language only.
- B (ii) if so, whether all other cause papers filed in the matrimonial proceedings may be filed in the English language only.
- (iii) if the answers to either one or both of the questions above are in the negative, whether the filing of the documents in English only is an irregularity that can be cured with the necessary directions by the court
- C that the said cause papers be filed in Bahasa Malaysia.

[2] We answered the first two questions in the affirmative, leaving the third question unnecessary for determination. Aside from counsel representing the respective parties, the Malaysian Bar appeared as *amicus curiae*. We place on record our appreciation for all submissions made.

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- [3] We must point out the fact that even before we started with the hearing of the substantive appeal, we were urged by the respondent to strike out the appeal on the basis that it was academic. The respondent had filed an application to this effect – encl. 6. According to the respondent, the parties had withdrawn the petition for judicial separation, proceeded to file a joint petition for divorce and had obtained a *decree nisi* with the necessary orders for custody and guardianship of the child from the marriage. Given these circumstances, the Federal Court was said to be without jurisdiction to hear the appeal as the matter was now academic; essentially because there was no longer any *lis* pending in the courts below.
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- [4] We disagreed. Although the general principle is that the court does not answer academic questions (see *Bar Council Malaysia v. Tun Dato' Seri Arifin Zakaria & Ors And Another Reference; Persatuan Peguam-peguam Muslim Malaysia (Intervener)* [2018] 10 CLJ 129, applying *Sun Life Assurance Co Of Canada v. Jervis* [1944] AC 111 and *Ainsbury v. Millington* [1987] 1 All ER 929), there are exceptions. In *R v. Secretary Of State For The Home Department, Ex Parte Salem* [1999] AC 450, the House of Lords explained that it will exercise its discretion to hear the appeal on a question of public law, even though by the time of the appeal, there was no longer an issue which will directly affect the rights and obligations of the parties concerned in the appeal.
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- [5] Two instances of such exception are illustrated in *Kerajaan Malaysia v. Mudek Sdn Bhd* [2017] 10 CLJ 158 and *Spind Malaysia Sdn Bhd v. Justrade Marketing Sdn Bhd & Anor* [2018] 4 CLJ 705. In *Mudek*, the parties had reached an amicable settlement with each other before the appeal was heard.
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Yet, the Federal Court proceeded to hear the appeal, troubled with the majority decision of the Court of Appeal which, “would remain on record, and unless dealt with, would cause confusion to parties and legal advisers alike as it does not reflect the correct position of the law”.

[6] Care and caution must, of course, be exercised when considering whether a given set of circumstances warrant the exercise of this sparingly used discretion. In this regard, we found that in order to deal with the questions of law for which leave had already been granted, a detailed consideration of facts will not be required. More importantly and even more critically, we take judicial notice of the fact that there is a substantial number of matrimonial proceedings not only pending but are anticipated to be filed in the courts below. For those cases, the decision of the Court of Appeal on the application of the Registrar’s Circular will apply by virtue of the doctrine of *stare decisis*.

[7] There is also a lack of uniformity of practice in matrimonial proceedings. The High Court sitting respectively in Kuala Lumpur and Penang are said to accept cause papers in matrimonial proceedings which are filed only in the English language while the High Court sitting in Malacca has rejected papers which do not have the National Language translation.

[8] Aside from matrimonial proceedings, the decision of the Court of Appeal has implications to a wider field of cases, to winding up petitions since the Circular in question applies equally to proceedings for the winding up of companies under the Companies (Winding-up) Rules 1972. We understand that a body of case law has consistently applied the Registrar’s Circular and allowed the winding-up petitions to be filed only in the English language as the Company (Winding-up) Rules 1972 are yet to be translated and gazetted – see *Export-Import Bank of Malaysia Bhd v. TFT Display (M) Sdn Bhd* [2021] CLJU 1185; [2021] 1 LNS 1185; *Walley Metal Works Sdn Bhd v. Safety Development Corporation Sdn Bhd*; *Pegawai Penerima (Applicant) & Ler Cheng Chye (Liquidator)* [2015] 1 CLJ 1019; *Citibank Bhd v. Malwira Manufacturing Sdn Bhd* [2012] 3 CLJ 81; and *Scientequip (M) Sdn Bhd v. Properties Review Sdn Bhd* [2006] 3 CLJ 592.

[9] It is thus quite clear that a proper resolution by this court is absolutely necessary. Leave was granted on the basis that the questions of law posed fulfilled the high threshold under s. 96 of the Courts of Judicature Act 1964 (Act 91). In this appeal, there was and there remained a strong and overwhelming element of public interest and public importance in the issue(s) raised. The decision in the High Court, which was affirmed on appeal and for which grounds have been provided by the Court of Appeal, serves as a binding precedent for other cases to follow. It was therefore imperative that for the proper administration of family justice, we, as the apex court, must proceed to deliberate and deliver our views on this most pressing issue.

- A [10] With those considerations, the objections of the respondent were overruled and the application in encl. 6 was dismissed.

Factual Background

- B [11] Some factual background for context. Both parties to the marriage agreed that their marriage had unfortunately irretrievably broken down. On 7 January 2022, the respondent filed an *ex parte* application at the High Court for, *inter alia*, interim sole custody, care and control of a son from the marriage (encl. 6). On 24 January 2022, the High Court granted certain orders in encl. 6. The order was however not served on the appellant. Consequently, it lapsed after 21 days from the date of the order. The interlocutory application was also not fixed for *inter partes* hearing within 14 days from the grant of the order.

- D [12] On 27 January 2022, the respondent filed yet another application bearing similar terms to encl. 6. On 24 March 2022, the appellant filed an application to set aside the *ex parte* order granted on 24 January 2022 – encl. 20. In this application, the appellant contended that there were no urgent circumstances warranting the application in encl. 6 to be filed on an *ex parte* basis, that the respondent had failed to disclose material facts, that there was a failure to comply with O. 29 r. 1 of the Rules of Court 2012, rr. 61(1) and 91 of the DMPR, and an assertion that the appellant had suffered damage and costs by reason of the *ex parte* order.

- F [13] On 18 April 2022, the appellant filed an application for, *inter alia*, interim guardianship, custody, care, control and access – encl. 26. The parties recorded a consent order to encl. 26. Thereafter, the appellant asked for encl. 20 to be heard. The respondent had actually agreed to this application, the only matter then outstanding was the matter of whether damages ought to be granted.

- G [14] At this point, the High Court dismissed encl. 20 on the ground that the appellant had failed to file the translation of this application within the time ordered. This was despite the appellant's protestations and claims that the requirement did not arise in the proceedings. The appellant's appeal to the Court of Appeal was dismissed.

Decision Of The High Court

- H [15] In the written grounds of decision, several reasons were articulated for the dismissal of encl. 20.

- I [16] First, the insistence of the appellant that encl. 20 need only be filed in the English language despite being directed to provide a translation into the National Language within two weeks. The learned judge disagreed. Relying on O. 92 r. 1(1) and (4) of the Rules of Court 2012, His Lordship held that encl. 20 had to be translated.

[17] According to the learned judge, even in urgent cases, O. 92 r. 1(4) required a translation of the documents to be filed within two weeks or within such extended time as allowed by the court. Insofar as the Registrar's Circular No. 5 of 1990 was concerned, the High Court held that encl. 20 was dismissed not because it was filed in the English language but because no translation was filed within the time directed and under the mandatory requirements of O. 92 r. 1 of the Rules of Court 2012. In fact, the learned judge found that the appellant had failed to do so despite the lapse of three months. The decision of *Syarikat Telekom Malaysia Bhd v. Business Chinese Directory Sdn Bhd* [1994] 2 CLJ 729; [1994] 2 MLJ 420 on the compliance with O. 92 was cited in support.

[18] The failure to file a translation in the National Language was an irregularity which, according to the High Court, ought to have been remedied by the appellant – see *Emrail Sdn Bhd & Ors v. Kuwait Finance House (Malaysia) Bhd* [2020] CLJU 382; [2020] 1 LNS 382; [2020] MLJU 439.

[19] His Lordship was also of the view that the unavailability of a translation of the DMPR into the National Language should not have been used as a reason for not filing a translation of encl. 20 and its related cause papers as the amendments to s. 8 of the National Language Act had been in force for over 30 years since 1 June 1990. The decisions in *Dato' Seri Anwar Ibrahim v. Tun Dr Mahathir Mohamad* [2010] 1 CLJ 444; [2010] 2 MLJ 41 and *Zainun Dahan lwn. Rakyat Merchant Bankers Bhd & Satu Lagi* [1997] 4 CLJ Supp 279; [1997] 4 BLJ 279; [1998] 1 MLJ 532 were cited in support.

Decision Of The Court Of Appeal

[20] The principal ground for the decision of the Court of Appeal was on the applicability of the Registrar's Circular. At para. [15], the Court of Appeal “found no merit in the appeal premised on O. 92 r. 1(1) and (4) RC 2012 coupled with the Registrar's Circular being administrative in nature” and at para. [27], that, the Registrar's Circular “cannot possibly prevail over” the language requirement in O. 92 r. 1(1) of the Rules of Court 2012.

[21] The court relied on *Megat Najmuddin Dato' Seri (Dr) Megat Khas v. Bank Bumiputra Malaysia Bhd* [2002] 1 CLJ 645; [2002] 1 MLJ 385, that where the directions conflict with statutory rules of court, the directions “are of no legal effect”. The Court of Appeal further relied on *Ooi Bee Tat v. Tan Ah Chim & Sons Sdn Bhd & Anor & Another Appeal* [1995] 4 CLJ 484; [1995] 3 MLJ 465 where the Supreme Court explained:

Practice directions are intended to be no more than a direction for administrative purpose ...

A Our Analysis And Determination

[22] The appellant had filed his cause papers in the matrimonial proceedings at the High Court in English. There was no translation of the same. For this, the appellant relied on the Registrar's Circular which states:

- B** Pekeliling Pendaftar No. 5 Tahun 1990
- Sebagaimana yang telah dimaklumkan bahawa Pelaksanaan Penggunaan Bahasa Malaysia di Mahkamah telah berkuatkuasa mulai dari 1hb Jun 1990. Sehubungan dengan itu satu Arahan Hakim Besar Malaya No. 2 Tahun 1990 telah dikeluarkan.
- C** 2. Sebagai garis panduan lanjut, YAA Hakim Besar Malaya telah mengarahkan bahawa mana-mana petisyen berkaitan dengan Penceraian dan Prosiding Hal-Ehwal Suami Isteri, Kebankrapan dan Penggugungan Syarikat, **dibenar difailkan dalam Bahasa Inggeris sehingga kaedah-kaedah berkenaan dengannya selesai diterjemah dan diwartakan.**
- D** 3. Arahan ini berkuatkuasa dengan serta merta sehingga diberitahu kelak.
(Mohd Ghazali Bin Mohd Yusoff)
Ketua Pendaftar Mahkamah Agung

(emphasis added)

- E** [23] In 2019, the Bar Council Family Law Committee met with the managing judge of the High Court in Kuala Lumpur over the application of this Circular. Circular No. 153/2019 captioned "Filing of Documents in English for Family Law Matters" and dated 6 August 2019 was issued following that meeting. In that Circular, the managing judge confirmed that the Registrar's Circular "remains valid, as far as matrimonial proceedings are concerned. As the Bahasa Malaysia translation of the Divorce and Matrimonial Proceedings Rules 1980 has yet to be gazetted, all cause papers may be filed in English". This practice of filing documents in English for family or matrimonial matters has thus carried on till today. The current appeal is no exception.
- F**
- G** [24] In dealing with the questions of law posed, it is useful to go back a little in time to why and how this Registrar's Circular came to pass. This requires us to appreciate and understand the juxta positioning of several events, legislations and various rules and directions issued over the relevant passage of time.
- H** [25] First, divorce and matrimonial proceedings. Such proceedings including judicial separations and matters related to matrimonial proceedings are governed by the Law Reform (Marriage and Divorce) Act 1976 [Act 164] and the Divorce and Matrimonial Proceedings Rules 1980 (DMPR); the DMPR being the Rules made pursuant to s. 108(1) of Act 164. The DMPR
- I** contains extensive provisions regulating how proceedings for the dissolution of marriage or obtaining of divorce decrees and the related ancillary reliefs concerning children are to be initiated and conducted.

[26] Although there is a National Language translation of Act 164, the authoritative text is the English language version of the Act – see PU(B) 127/1976. The DMPR, enacted in English, however, remains untranslated till today for reasons which are irrelevant for this appeal. A

[27] Then, there are the Rules of the High Court 1980 and later Rules of Court 2012. These Rules, enacted under s. 17 of the Courts of Judicature Act 1964 (Act 91) and s. 4 of the Subordinate Courts Rules Act 1955 (Act 55), regulate procedure and proceedings before the High Court and subordinate courts. Effective from 1 August 2012, the Rules of Court 2012 apply to both the High Court and subordinate courts. B

[28] Next, the National Language Acts 1963/67 (Revised 1971) [Act 32] was revised in 1971. In that revision exercise, the two Acts, the National Language Act of 1963 and the National Language Act of 1967 were consolidated into a single Act with effect from 1 July 1971. The Acts came into force in the States of Sabah and Sarawak on different dates. C

[29] Section 2 of Act 32 provides that the National Language shall be used for official purposes “Save as provided in this Act and subject to the safeguards contained in art. 152(1) of the Constitution relating to any other language and the language of any other community in Malaysia”. Even for official purposes, s. 4 provides that the Yang di-Pertuan Agong may permit the continued use of the English language as may be deemed fit. D E

[30] In the matter of proceedings in court, s. 8 (as amended *vide* Act A765/1990 with effect from 30 March 1990) permits the continued use of the English language in the interests of justice:

8. All proceedings (other than the giving of evidence by a witness) in the Federal Court, Court of Appeal, the High Court or any Subordinate Court shall be in the national language: F

Provided that the Court may either of its own motion or on the application of any party to any proceedings and after considering the interests of justice in those proceedings, order that the proceedings (other than the giving of evidence by a witness) shall be partly in the national language and partly in the English language. G

[31] To facilitate the amendment to s. 8 of Act 32, Practice Direction No. 2 of 1990 [PD No. 2/1990] was issued under the authority of the Chief Judge of Malaya on 10 May 1990. PD No. 2/1990 deals specifically with all urgent and pending proceedings: H

Adalah memang dijangkakan bahawa beberapa kesulitan praktikal akan dihadapi dalam tempoh sementara pelaksanaan pindaan kepada seksyen 8 Akta Bahasa Kebangsaan melalui Akta Pindaan A765. Bagi mengatasi kesulitan-kesulitan tersebut, arahan berikut hendaklah terpakai dalam tempoh sementara ini. I

- A 1. Dalam kes-kes kedesakan, prosiding boleh dimulakan atau dijalankan sebahagiannya dalam Bahasa Kebangsaan dan sebahagiannya dalam Bahasa Inggeris atau kesemuanya dalam Bahasa Inggeris dengan syarat bahawa:
- B (i) suatu sijil kedesakan yang menjelaskan kedesakan perkara itu dalam Bahasa Inggeris difailkan oleh peguamcara berkenaan; dan
- (ii) salinan semua dokumen tersebut dalam Bahasa Kebangsaan hendaklah difailkan dalam tempoh dua minggu atau dalam tempoh yang dilanjutkan sebagaimana yang dibenarkan oleh mahkamah.
- C 2. Prosiding-prosiding yang telah dimulakan sebelum 1hb Jun 1990 boleh, atas budi bicara mahkamah, diteruskan sebahagiannya dalam Bahasa Kebangsaan dan sebahagiannya dalam Bahasa Inggeris atau kesemuanya dalam Bahasa Inggeris.
- D 3. Mengikut Aturan 92(1) Kaedah-Kaedah Mahkamah Tinggi 1980 dan Aturan 53(5) Kaedah-Kaedah Mahkamah Rendah 1980, mana-mana dokumen yang pada asalnya dalam Bahasa Inggeris bolehlah digunakan sebagai ekshibit, dengan atau tanpa terjemahannya dalam Bahasa Kebangsaan.
- E 4. Sekiranya terdapat apa-apa pertikaian atau kesulitan dalam pelaksanaan Akta Pindaan A765 seperti yang disebut terdahulu, yang tidak diliputi oleh Arahan ini, Mahkamah boleh, atas permohonan lisan oleh Peguam bagi mana-mana pihak atau atas permohonan dengan cara Saman dalam Kamar secara *ex parte* atau Saman Pemula atau atas kehendaknya sendiri, memberi apa-apa arahan sebagaimana yang dikehendaki demi kepentingan keadilan.
- F [32] As can be seen, the substance of PD No. 2/1990 is substantially reflected in the amended s. 8, except that the discretion on the use of cause papers in the English language was no longer restricted to urgent circumstances.
- G [33] Shortly after PD No. 2/1990 was issued, Registrar's Circular No. 5 of 1990, the contents of which have already been set out, was issued on 28 July 1990. This Circular deals specifically with divorce petitions and proceedings related to matrimonial affairs, bankruptcy and winding-up proceedings. This Circular essentially allows the cause papers relating to divorce and matrimonial proceedings, insolvency and winding-up
- H proceedings to be filed in English until such time as the relevant Rules are translated into the National Language and the translations are gazetted. We have used the word "allows" because the Registrar's Circular is still in effect today as the DMPR, relevant to this appeal, have yet to be translated and
- I gazetted.

[34] Enclosure 20 at the High Court was dismissed because there was no translation of these cause papers into the National Language. Order 92 r. 1 operated on the mind of the learned judge and it reads as follows:

(1) Subject to paragraph (2), **any document required for use in pursuance of these Rules shall be in the national language** and may be accompanied by a translation thereof in the English language, except that the translation for the purpose of Order 11, rule 6(4) and rule 7(1) shall be prepared in accordance with rule 6(5) of that Order:

Provided that any document in the English language may be used as an exhibit, with or without a translation thereof in the national language.

(2) For Sabah and Sarawak, any document required for use in pursuance of these Rules shall be in the English language and may be accompanied by a translation thereof in the national language except that the translation for the purpose of Order 11, rule 6(4) and rule 7(1) shall be prepared in accordance with rule 6(5) of that Order.

(3) ...

(4) In cases of urgency, proceedings may be commenced or conducted partly in the English language or wholly in the English language provided that:

- (a) a certificate of urgency explaining the urgency of the matter is filed by the solicitor; and
- (b) copies of all such documents in the national language shall be filed within two weeks or within such extended period as the Court may allow:

Provided that:

- (a) any document in the national language may be used as an exhibit, with or without a translation thereof in the English language; and
- (b) any document in the English language may be used as an exhibit, with or without a translation thereof in the national language.

(emphasis added)

[35] It is quite clear that O. 92 r. 1 is applicable where the document(s) filed in court are for use in pursuance to “these Rules”; these Rules being the Rules of Court 2012. But, Rules of Court 2012 do not apply to matrimonial proceedings under Act 164 and the DMPR. This is clearly provided in O. 1 r. 2(2), which seems to have escaped the attention of the courts below:

Application (O. 1 r. 2)

2. (1) Subject to paragraph (2), these Rules apply to all proceedings in:

- (a) the Magistrates’ Court;

- A (b) the Sessions Court; and
(c) the High Court.

- B (2) **These Rules do not have effect in relation to proceedings in respect of which rules have been or may be made under any written law for the specific purpose of such proceedings** or in relation to any criminal proceedings.

(emphasis added)

- C [36] Order 1 r. 2(2) specifically recognises that the Rules of Court 2012 will not have any effect in or to those proceedings where separate rules have already been made or may be made under written law specifically for the purpose of such proceedings. This is an express provision for the operation of the maxim *generalia specialibus non derogant*. In *Lau Keen Fai v. Lim Ban Kay & Anor* [2012] 1 CLJ 569; [2012] 2 MLJ 8, this court held that this maxim applied to exclude the operation of the general law on appeals under the Legal Profession Act 1976 [Act 166] as that Act had specific provisions on appeal. Similarly, in the recent decision of *Protasco Bhd v. Tey Por Yee & Anor And Other Appeals* [2021] 9 CLJ 349; [2021] 6 MLRA 370, the Federal Court held that it is the specific law in the form of the Bankers' Books (Evidence) Act 1949 which applied to banking documents and not the general provisions of the Rules of Court 2012.

- E [37] There is also O. 94 r. 2 of the Rules of Court 2012. Under r. 2(1), O. 5 r. 1 which deals with the mode of commencement of proceedings is expressly excluded from application to those proceedings initiated under the written laws listed in Appendix C, except as provided under the Rules themselves. Appendix C was amended *vide* Rules of Court 2012 (Amendment) 2018 [PU(A) 24/2018]. Order 94 r. 2(2) provides that in the event there is any inconsistency between any of the Rules made under the specific written law and the Rules of Court 2012, the former shall prevail:

Exception (O. 94, r. 2)

- G 2. (1) Order 5, rule 1 shall not apply to the proceedings under the written laws listed in Appendix C, except as provided under these Rules.
(2) In the event of any inconsistency, **the rules under the written laws in Appendix C shall prevail over these Rules.**
- H (3) Any application under any written law, other than those listed in Appendix C, which is by way of a mode other than originating summons or writ, shall be construed to be by way of originating summons in accordance with these Rules.

(emphasis added)

- I [38] In the list of exempted written laws set out in Appendix C is item 5, dealing with matrimonial proceedings under Act 164:

APPENDIX C
LIST OF EXEMPTED LAWS

(1) Item	(2) Proceedings	(3) Written law
1.	Bankruptcy proceedings	Bankruptcy Act 1967
2.	Proceedings relating to the winding up of companies and capital reduction	Companies Act 2016 [Act 777]
3.	Criminal proceedings	Criminal Procedure Code [Act 593]
4.	Proceedings under the Elections Offences Act 1954	Elections Offences Act 1954 [Act 5]
5.	Matrimonial proceedings	Law Reform (Marriage and Divorce) Act 1976 [Act 164]
6.	Land reference	Land Acquisition Act 1960 [Act 486]
7.	Admission to the Bar	Legal Profession Act 1976 [Act 166] Advocates Ordinance of Sabah [Sabah Cap. 2] Advocates Ordinance of Sarawak [Sarawak Cap. 110]
8.	Proceedings under the Income Tax Act 1967	Income Tax Act 1967 [Act 53]
9.	Proceedings under the Sabah Trustees (Incorporation) Ordinance 1951	Sabah Trustees (Incorporation) Ordinance 1951 [Cap. 148]
10.	Proceedings under the Sabah Probate and Administration Ordinance 1947	Sabah Probate and Administration Ordinance 1947 [Cap. 109]
11.	Proceedings under the Real Property Gains Tax Act 1976	Real Property Gains Tax Act 1976 [Act 169]
12.	Proceedings under the Petroleum (Income Tax) Act 1967	Petroleum (Income Tax) Act 1967 [Act 543]
13.	Proceedings under the Development Financial Institutions Act 2002	Development Financial Institutions Act 2002 [Act 618]
14.	Proceedings under the Trust Companies Act 1949	Trust Companies Act 1949 [Act 100]
15.	Proceedings under the Kootu Funds (Prohibition) Act 1971	Kootu Funds (Prohibition) Act 1971 [Act 28]

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- A [39] It cannot be any clearer that the Rules enacted under written laws are to apply to those subject matters mentioned in Appendix C. If the Rules of Court 2012 are ever to apply, it is only where it is expressly provided in the Rules of Court 2012. This reemphasises the significance and application of the specific rules enacted under written law. In the present appeal, it would
- B be the DMPR themselves, which contain comprehensive provisions on the commencement and conduct of matrimonial proceedings, including applications for judicial separation under Act 164. All this, therefore, means that the Rules of Court 2012 and in particular, O. 92 do not apply to the matrimonial proceedings at hand.
- C [40] In any case, there is also r. 105 of the DMPR which provides for the issuance of directions for the purpose of ensuring uniformity of practice and observance of the statutory requirements in matrimonial proceedings:
105. Practice to be observed in registries and divorce courts
- D The Chief Justice may issue directions for the purpose of securing in the registries and the divorce courts due observance of statutory requirements and uniformity of practice in matrimonial proceedings.
- E [41] There is a similar power in s. 17A of the Courts of Judicature Act 1964 (Act 91) for the issuance of practice directions and in O. 92 r. 3B; the directions seen as “necessary for the better carrying out or giving effect” to the provisions of the Rules of Court 2012.
- F [42] There is nothing in the Registrar’s Circular to suggest that it was issued pursuant to r. 105. However, it would be reasonable to say that the contents of this Circular accord with the purpose of why any directions would be issued under r. 105, that it was issued in order to ensure uniformity of practice and due observance of the statutory requirements in Act 164 and the DMPR.
- G [43] PD No. 2/1990 was issued following the application of the National Language to proceedings in court. Even then, there was cognisance of the importance of interests of justice, that such interests must never be compromised in the course of implementing procedures for the better administration of justice. PD No. 2/1990, as is with other Practice Directions is directed at the judges who will hear the applications under the relevant laws.
- H [44] PD No. 2/1990 was directed at all the judges and Judicial Commissioners of the High Court of Malaya, Sessions Court Judges, Deputy and Senior Assistant Registrars and Magistrates in West Malaysia. This PD was copied extensively to everyone who mattered or was concerned with the administration of justice, namely, the Chief Justice, Chief Judge of Sabah &
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Sarawak (for information), judges of the Federal Court, Attorney General, Chief Registrar of the Federal Court, Registrar of the High Court, President of the Bar Council of Malaysia, Editor General of the Malayan Law Journal, Malayan Law Journal and the Senior Editor at Dewan Bahasa & Pustaka. Ultimately, the public, the users of the system of justice will get wind of the details in the direction.

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[45] The same may be said of the Registrar's Circular. It was directed at all the Senior Assistant Registrars and Registrars in West Malaysia.

[46] But, it is the recipients of PD No. 2/1990 and the Registrar's Circular that we must have regard to and not so much who was copied in on the direction or the fact that the public will come eventually to be aware of the directions. The direction is given to these recipients so that they know what to do when confronted with the particular circumstance. What the administrators who man the registries have to do is to comply with the Registrar's Circular and accept any cause papers which are filed only in the English language (dibenar difailkan dalam Bahasa Inggeris sehingga kaedah-kaedah berkenaan dengannya selesai diterjemah dan diwartakan).

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[47] As for the users who may have reason to be in court, they would have the confidence to know what the particular practice will be. In other words, any litigant taking proceedings under Act 164 including filing an application such as encl. 20, can expect that it will be "business as usual" and may proceed to file the application only in the English language; particularly since the DMPR have yet to be translated and the translation, gazetted. A litigant such as the appellant here can expect their cause papers to be accepted not just by the Registry but by the learned judge without any issue since there is a clear permission for a filing of related documents in English.

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[48] This expectation would be quite legitimate and fair since the litigant or appellant in this appeal, cannot use the Rules of Court 2012 *simpliciter* as the Rules themselves have excluded its application to matrimonial proceedings under Act 164 (O. 94 r. 2 and Appendix C item 5). To complicate matters, the existing DMPR have yet to be translated.

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[49] Here, we must address r. 3 of the DMPR which reads as follows:

(1) Subject to these Rules and to any other written law, the Subordinate Courts Rules 1980 and the Rules of the High Court 1980 shall apply with necessary modifications to the commencement of matrimonial proceedings in, and to the practice and procedure in matrimonial proceedings pending in the Sessions Court in West Malaysia or the First Class Magistrate's Court in East Malaysia and in the High Court respectively.

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- A (2) For the purpose of paragraph (1), any provision of these Rules authorising or requiring anything to be done in matrimonial proceedings shall be treated as if it were, in the case of proceedings pending in the High Court, a provision of the Rules of the High Court 1980.
- B [50] Although r. 3 provides for the application of the then Rules of the High Court 1980 and now the Rules of Court 2012, it categorically states that the application is “Subject to these Rules” and that the application is “with necessary modifications”. However, as we have seen, the Rules of Court 2012 themselves have excluded its application to matrimonial proceedings.
- C [51] While Practice Directions and circulars are issued for the proper and better administration of justice, and they are generally effective in that regard, the courts who are responsible for the issuance of these directions and circulars must guard against adherence that results in injustice. The circumstances and conditions that present in this appeal illustrates this unfortunate outcome, with the appellant complying with the Registrar’s
- D Circular but indirectly faulted by the High Court for having done so.
- E [52] In *Witech Sdn Bhd & Ors v. BHR Group Ltd* [2010] 9 CLJ 288, the Court of Appeal acknowledged the “importance of the Registrar’s Circular as a practice direction”, as highlighted by Sir Thomas Bingham MR in *Costellow v. Somerset County Council* [1993] 1 WLR 256. However, the Court of Appeal opined that:
- Defendants must be protected from the injustice that they might incur if a judgment is entered against them in contravention of the relevant procedural rules or in some other way that might prevent them from exercising their right to defend the action.
- F [53] We agree. The relevant direction or circular must be carefully examined and appreciated in context. Having held out to the public that their cause papers may be filed only in the English language, it does not hold any sense to then castigate a party for not having complied with the Rules of Court 2012 and reasoning that the direction and circular are in fact worth
- G naught. The dismissal of encl. 20 have, in our opinion, the effect of depriving the appellant of access to justice and equal protection of the law as embodied in arts. 5 and 8 of the Federal Constitution.
- H [54] In the course of this judgment, we have deliberately referred to the cause papers filed under Act 164 as opposed to the petition alone. It makes sense that our deliberations extend and include all cause papers filed in relation to the petition.
- I [55] Earlier, we had also pointed out the existence of a consistent line of authorities from the High Court on the application of the same Registrar’s Circular in the context of winding-up proceedings. From the above deliberations, the interpretation in those decisions is correct.

[56] The Court of Appeal had found the Circular to be in conflict with the Rules of Court 2012, particularly O. 92 r. 1(1). There was however, no analysis as to how the conflict arose, if at all there is one, since the intent of the Registrar's Circular is really at the end of the day to defer the operation of the Rules of Court 2012 to such time as when, for the purposes of this appeal, the DMPR have been translated and gazetted. From the above analysis, it is evident that the Rules of Court 2012 do not apply to matrimonial proceedings filed under Act 164 and DMPR, in which case, the matter of conflict does not even arise.

[57] For all the reasons adumbrated above, we allowed the appeal and set aside the decisions of the courts below. We answered the first two questions of law posed in the affirmative and decline to answer the third as it is no longer necessary with the development of the case, as confirmed by learned counsel for the appellant.

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